

ORDINANCE NO. 23

SERIES 2020

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE TOWN TO ENTER INTO A LAND LEASE AGREEMENT WITH COMMNET CELLULAR d/b/a VERIZON WIRELESS FOR THE INSTALLATION OF A NEW WIRELES TOWER AND RELATED FACILITIES ON TOWN OWNED PROPERTY LOCATED AT 2 N. 8TH STREET, CRESTED BUTTE, COLORADO

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado; and

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property; and

WHEREAS, the Town staff have recommended to the Town Council that the Town enter into a Land Lease Agreement with CommNet Cellular d/b/a Verizon Wireless upon Town-owned property where the Town's Public Works Yard is situated at 2 N. 8th Street, Crested Butte, Colorado, for purposes of allowing Verizon to install a new wireless tower and related facilities to replace the existing wireless tower, and granting Verizon easements for such tower and facilities on this Town-owned property; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Town enter into the Land Lease Agreement attached hereto as **Exhibit A** as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Authorization to Grant Easement Upon Town-Owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the Town to enter into a Land Lease Agreement with CommNet Cellular d/b/a Verizon Wireless upon Town-owned property where the Town's Public Works Yard is situated at 2 N. 8th Street, Crested Butte, Colorado, for purposes of allowing Verizon to install a new wireless tower and related facilities to replace the existing wireless tower, and granting Verizon easements for such tower and facilities on this Town-owned property, and authorizes and directs the Town Manager and Town Clerk to execute any and all documents necessary and appropriate to consummate said Land Lease Agreement with Verizon following approval thereof by the Town Attorney.

Section 2. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases,

words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ, AND SET FOR PUBLIC HEARING THIS 4th DAY OF August, 2020.

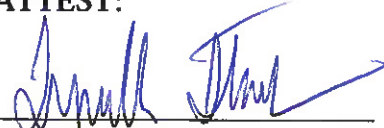
ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 17th DAY OF August, 2020.

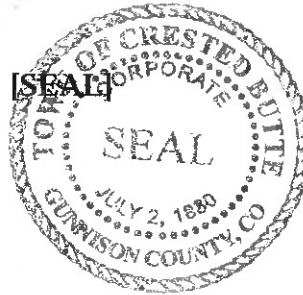
TOWN OF CRESTED BUTTE, COLORADO

By: 

James A. Schmidt, Mayor

ATTEST:


Lynelle Stanford, Town Clerk



LAND LEASE AGREEMENT

This Agreement, made this 10th of November, 2020, between the Town of Crested Butte, a Colorado home rule municipality, with its principal offices located at 507 Maroon Ave., P.O. Box 39, Crested Butte, CO 81224 (telephone number 970-349-5338), hereinafter designated "LESSOR," and CommNet Cellular Inc. d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated "LESSEE." LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

1. PREMISES. LESSOR hereby leases to LESSEE a portion of that certain parcel of property (the entirety of LESSOR's property is referred to hereinafter as the Property), located on Butte Avenue, Tract 1 Dyer Subdivision, County of Gunnison, State of Colorado 81224, and being described as a parcel containing 929 square feet (the "Lease Area"), together with the non-exclusive right (the "Access Right-of-Way") for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a fifteen foot (15') wide right-of-way extending from the nearest public right-of-way to the Lease Area, and the non-exclusive right (the "Utility Rights-of-Way") for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along two (2) fifteen foot (15') wide rights-of-way from the Lease Area. LESSEE shall demolish and remove LESSOR's current tower located within the Lease Area and construct a new tower (the "New Tower") within the Lease Area. Upon completion of the construction, LESSEE shall own the New Tower in fee. The Lease Area, New Tower and Access Right-of-Way and the Utility Rights-of-Way (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof.

In the event any public utility is unable to use the Access Right-of-Way or the Utility Rights-of-way, the LESSOR hereby agrees to grant an additional right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

2. USE AND ACCESS.

a. The Lease Area shall be used by LESSEE for the purpose of installing, removing, replacing, maintaining, repairing and operating all at LESSEE's sole cost and expense, a wireless communications facility ("Facility"), including without limitation, related equipment shelter, tower, antenna equipment and fixtures, for LESSEE's operation, and for no other purposes whatsoever. LESSEE acknowledges that LESSOR will deliver the Premises in "as is" condition, and except as otherwise expressly provided herein, without warranty or representation, express or implied, as to its condition or suitability for the permitted use. LESSEE shall not use the Premises as power transmission facility, or for any purpose or use that renders the LESSOR's insurance on the Property void. LESSEE shall not use the Premises in a manner that will unreasonably disturb LESSOR's occupancy or use of the remainder of the Property and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon, or connected with the Premises, all at LESSEE's sole expense.

b. LESSEE shall have the non-exclusive right of ingress and egress from a public right-of-way, 7 days a week, 24 hours a day, over the Property to and from the Premises for

the purpose of installation, operation, and maintenance of its communications equipment. LESSEE shall not be permitted to install any utilities within the Access Right-of-Way; all of LESSEE's utilities shall be installed within the two Utility Rights-of-Way.

3. TERM: RENTAL.

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined). The Commencement Date shall be the first day of the month after LESSEE begins installation of LESSEE's communications equipment. The Parties agree to acknowledge the Commencement Date in writing. The "Term," as used in this Agreement shall mean and refer to the term as provided in this Paragraph.

b. The Agreement shall automatically be extended for four (4) additional five (5) year extension term unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least three (3) months prior to the end of the then current term. The initial term and all extension terms shall be collectively referred to herein as the "Term".

c. In consideration for LESSOR leasing the Premises to LESSEE pursuant to this Agreement, LESSEE shall pay rent to LESSOR commencing on the Commencement Date. The annual rental for the first (1st) year of the initial term shall be Fifteen Thousand and 00/100 Dollars (\$15,000.00), and shall be paid in equal monthly installments due on the first day of the month, in advance, to LESSOR at 800 North Boulevard St., Gunnison, CO 81230 or at such place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 22 below. LESSOR and LESSEE acknowledge and agree that initial rental payment(s) shall not actually be sent by LESSEE until ninety (90) days after the Commencement Date.

d. The annual rent for each five (5) year extension term shall be increased by ten percent (10%) over the annual rental due during the immediately preceding five (5) year term.

e. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and, in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

f. LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") evidencing LESSOR's interest in, and right to receive payments under, this Agreement, including without limitation: (i) documentation, acceptable to LESSEE in LESSEE's reasonable discretion, evidencing LESSOR's good and sufficient title to and/or interest in the Property, subject to Paragraph 18 below, and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to LESSEE, for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation relevant to this Agreement requested by LESSEE in LESSEE's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. The Rental Documentation

shall be provided to LESSEE in accordance with the provisions of and at the address given in Paragraph 22.

Within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE Rental Documentation in the manner set forth in the preceding paragraph. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, any assignee(s) or transferee(s) of LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. Delivery of Rental Documentation to LESSEE by any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall be a prerequisite to the payment of any rent by LESSEE to such party and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments to any assignee(s), transferee(s) or other successor(s) in interest of LESSOR until Rental Documentation has been supplied to LESSEE as provided herein.

4. Intentionally Omitted.

5. Intentionally Omitted.

6. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSEE shall be responsible for the payment of any taxes, levies, assessments, and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed, so long as no lien attaches to the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment.

7. GOVERNMENTAL APPROVALS. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement, at its sole expense, all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit LESSEE to use the Premises as set forth above. LESSEE shall commence obtaining all necessary governmental approvals upon the execution of this Agreement. In the event that LESSEE is not otherwise in default under this Agreement and (i) any of such applications for such Governmental Approvals should be finally rejected despite diligent efforts by LESSEE to obtain such Government Approvals; or (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (iii) LESSEE reasonably determines that such Governmental

Approvals cannot be obtained in a timely manner despite reasonable efforts by LESSEE to obtain such Governmental Approvals; or (iv) LESSEE reasonably determines that any soil boring tests are unsatisfactory for the installation of the Facility in the Lease Area, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder, and except for LESSEE's obligations under Paragraph 13.b. below.

8. INDEMNIFICATION. LESSOR shall not be liable to LESSEE or LESSEE's employees, contractors, subcontractors, suppliers or agents for any injury to person or damage to property on or about the Premises caused by the negligence or misconduct of LESSEE, LESSEE's agents, servants or employees, or of any other person entering upon the Property or Premises under express or implied invitation of LESSEE. LESSEE hereby agrees to indemnify, hold harmless and protect and defend LESSOR and LESSOR's officers, directors, agents, employees, representatives, and contractors from and against any and all claims, causes of action, liabilities, losses, costs, and damages, whether foreseen or unforeseen, arising out of or related to LESSEE's use of or activities on or about the Premises or operation of the Facility, except to the extent such claims or damages are due to or caused by the negligence or willful misconduct of the LESSOR or its employees or agents. The provisions of this Paragraph 8 shall survive the termination, cancellation, or expiration of this Agreement. It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver by LESSOR of its governmental immunity or of the governmental immunity of the State of Colorado, as an express or implied acceptance by LESSOR of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act.

9. INSURANCE.

a. LESSEE shall procure and maintain, at its sole expense throughout the duration of this Agreement, a commercial general liability policy with limits of \$1,000,000.00 per occurrence for bodily injury (including death and property damage, and \$5,000,000.00 general aggregate, covering LESSEE's use and occupancy of the Premises and operation of the Facility, with a certificate of insurance to be furnished to LESSOR prior to any use or occupancy of the Premises, or commencement of any construction or installation activities. Upon receipt by LESSEE of any written notice of cancellation of such insurance from its insurer, LESSEE shall use commercially reasonable efforts to provide the LESSOR with thirty (30) days prior written notice of such notice of cancellation. Furthermore, such policy shall: (i) include LESSOR as an additional insured as their interest may appear under this Agreement; (ii) include cross-liability coverage; and (iii) be primary and noncontributory with any insurance or program of self-insurance that may be maintained by LESSOR. LESSEE shall also maintain standard form property insurance ("All Risk" coverage) equal to the full replacement cost covering all of LESSEE's improvements, alterations, equipment and other personal property of LESSEE on or about the Premises or the Property. LESSOR from time to time during the Term upon notice to, review and approval by the LESSEE, shall have the right to cause LESSEE to increase the above coverages to commercially reasonable

levels. LESSOR agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits of \$1,000,000.00 per occurrence for bodily injury (including death) and property damage, and \$5,000,000.00 general aggregate, covering LESSOR's use and occupancy of the Premises and operation of the Facility, with a certificate of insurance to be furnished to LESSEE prior to use or occupancy of the Premises. Such policy shall include LESSEE as an additional insured as their interest may appear under this Agreement.

b. LESSEE shall maintain Workers' Compensation insurance covering all employees entering upon the Premises in accordance with scope and limits as required by the State of Colorado and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit.

c. LESSEE shall maintain Commercial Automobile Liability insurance with limits of \$1,000,000 combined single limits each accident for bodily injury and property damage.

d. LESSEE shall require any of its contractors, subcontractors, and suppliers entering upon the Premises to obtain and maintain substantially the same coverage as required of the LESSEE.

e. LESSOR shall also obtain and keep in force during the Term a policy or policies insuring against loss or damage with a commercially reasonable valuation, as the same shall exist from time to time without a coinsurance feature.

10. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 8 and 28, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue other than rent due or to become due under this Agreement, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

11. EARLY TERMINATION. Notwithstanding anything to the contrary contained herein, LESSEE shall have the right to terminate this Agreement upon any annual anniversary of the Commencement Date during the Term, provided that the following three (3) requirements are met as of such date: (i) LESSEE has provided least ninety (90) days' prior written notice of such early termination to LESSOR; (ii) LESSEE has paid to LESSOR, in addition to the rent otherwise payable as provided in Paragraph 3 above, an early termination fee equal to three (3) months' rent at the rate then applicable; and (iii) LESSEE is not then in default of this Agreement as provided in Paragraph 26 a. herein.

12. INTERFERENCE. LESSEE shall be responsible for resolving technical interference problems between the Facility and other equipment located at the Property and, in the event that there are other wireless telecommunications located on the Property, LESSEE shall reasonably cooperate with the LESSOR and/or other lessees to resolve any issues of interference in accordance with the rules promulgated by the Federal Communications Commission ("FCC"). The Facility shall not disturb the communications configurations, equipment, and frequencies that exist on the Property as of the Commencement Date ("Preexisting Communications"), and the Facility

shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). This is not an exclusive lease and LESSOR may sign other leases with other telecommunications and internet providers; however, subject to preexisting rights and the provisions of this Paragraph, LESSOR will not permit the installation of any future equipment on the Property which results in technical interference problems with LESSEE's then existing equipment that are measurable in accordance with industry standards and in violation of FCC non-interference rules.

13. IMPROVEMENTS, REMOVAL, RELOCATION AND MAINTENANCE.

a. LESSEE shall, at LESSEE's sole cost and expense, make the improvements to the Lease Area set forth in Exhibit "B" to this Agreement (the "Initial Improvements"). LESSOR shall be provided with a set of keys to the gate. LESSEE shall have the right to make additional alterations and improvements to the Premises, as LESSEE deems necessary from time to time for the operation of its Facility. In connection with LESSEE's installation and construction of improvements on the Premises, all of LESSEE's construction and installation work shall be performed at LESSEE's sole cost and expense, in a good and workmanlike manner and in conformance with all applicable laws, ordinances, rules and regulations. Subject to the terms of Section 32 herein, LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto. Any improvements, modifications, alterations, or construction by LESSEE shall be constructed in strict conformity with such approved plans and specifications and will be subject to Town review and approval. The terms "improvements, alterations, modifications, or construction" as used in this Paragraph shall not include (and, therefore, not require approval) all changes to equipment inside the equipment cabinets or like for like swap of antennas and related equipment as LESSEE may reasonably consider necessary and desirable to adapt or equip the Facility for LESSEE's use and occupancy. LESSEE shall not place any signage, logos or graphics on the Facility, Premises or Property, except for signage required by law or expressly authorized by LESSOR in writing.

b. LESSEE shall, within ninety (90) days following expiration or any termination of this Agreement, remove its shelter(s), antenna structure(s) (including footings), equipment, conduits, fixtures and all personal property and restore and surrender the Lease Area to LESSOR in substantially the same condition as existed prior to LESSEE's construction of improvements. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE installed on the Lease Area shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws (as defined in Paragraph 32 below). All work to remove the improvements and otherwise restore the Lease Area to such condition shall be performed and completed at the expense of LESSEE and shall be accomplished in a good workmanlike manner.

c. LESSEE, shall, at LESSEE's sole cost and expense, maintain and repair the Premises, Facility, and LESSEE's other improvements and fixtures installed or constructed on the Premises pursuant to Paragraph 13 a. above in good and safe condition and in compliance with all applicable laws, ordinances, rules, and regulations. During the term hereof, LESSEE shall keep the Premises in a neat and tidy condition and keep the same clear of litter, debris, obstructions, or

weeds. LESSOR shall have no obligation to LESSEE to maintain or repair the Premises or the Facility. LESSEE shall promptly repair any damage to LESSOR's property or the Property caused by LESSEE's construction or operation of the Facility or LESSEE's access, use or occupancy of the Premises.

d. LESSEE shall not permit any claims to be asserted against the LESSOR or the Property nor shall LESSEE permit any mechanics', materialman's' or other liens to be filed against the Property nor against the Premises. LESSEE further covenants and agrees that any claims asserted against the LESSOR or the Property and that any lien filed against the Property for work claimed to have been done for or materials claimed to have been furnished to, LESSEE, will be discharged by LESSEE by bond or otherwise within thirty (30) days after the filing thereof, at the cost and expense of LESSEE. If any such claims are asserted or such liens are filed and not released within such thirty (30) day period, LESSOR may, without waiving its rights and remedies based on such breach by LESSEE and without releasing LESSEE from any of its obligations, cause such claims and liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such claims and liens. LESSEE shall pay to LESSOR at once, upon notice to LESSEE, any sum paid by LESSOR to remove such claims and liens, together with interest at the legal rate from the date of such payment by LESSOR.

14. HOLDOVER. If upon expiration of the Term the Parties are negotiating a new lease or a lease extension, then this Agreement shall continue during such negotiations on a month to month basis at the rental in effect as of the date of the expiration of the Term. In the event that the Parties are not in the process of negotiating a new lease or lease extension and LESSEE holds over after the expiration or earlier termination of the Term, then LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed. Either party may terminate any such hold-over tenancy on 30 days' written notice to the other.

15. ELECTRICAL.

a. If permitted by the local utility company serving the Premises, LESSEE shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by LESSEE at the Premises and LESSEE shall pay the utility company directly.

b. If an electrical meter is not permitted, then LESSEE may furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by LESSEE at the Premises and shall pay the utility company directly if permitted by the utility company.

c. In the event a sub-meter is installed and the utility company will not permit LESSEE to pay the utility company directly, then the LESSOR shall read LESSEE's sub-meter on a monthly basis and provide LESSEE with an invoice for LESSEE's power consumption on an annual basis. Each invoice shall reflect charges only for LESSEE's power consumption based on the average kilowatt hour rate actually paid by LESSOR to the utility, without mark up or profit.

d. All invoices for power consumption shall be sent by LESSOR to LESSEE at Verizon Wireless, M/S 3846, P.O. Box 2375, Spokane, WA 99210-2375, and shall be provided to LESSEE within 90 days following the conclusion of each calendar year (otherwise, LESSOR

waives the right to collect applicable electrical charges). Upon written request from LESSEE, LESSOR shall provide copies of electricity bills received by LESSOR during any period that LESSOR submits invoices to LESSEE for reimbursement and for that same period LESSOR shall provide documentation of the sub-meter readings applicable to such periods. LESSEE shall pay each invoice within 45 calendar days after receipt of the invoice from LESSOR.

e. LESSEE shall be permitted to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LESSOR. LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premise.

16. Intentionally omitted.

17. QUIET ENJOYMENT. LESSOR represents and agrees that, subject to the provisions of this Agreement, LESSEE is entitled to access to the Premises at all times and to the quiet enjoyment and possession of the Premises throughout the Term of this Agreement, provided that LESSEE is not then in default under this Agreement, and provided further, that in accessing the Premises, LESSEE will not disrupt or impair LESSOR's use of or activities or operations on the Property. LESSOR shall not have unsupervised access to the LESSEE's equipment, except in the event of any emergency. In the event of any emergency situation which poses an immediate threat of substantial harm or damage to person and/or property which requires immediate entry on the Lease Area, LESSOR shall endeavor to notify LESSEE and, thereafter, if LESSEE fails to act immediately, the LESSOR may enter the Lease Area and take such actions as are required to protect individual or personal property from such immediate threat of substantial harm or damage; provided, if the threat is such that the LESSOR did not reasonably have time to notify LESSEE, then promptly after such emergency entry onto the Lease Area, LESSOR shall give LESSEE notice of such entry. In addition, LESSOR shall have the right to periodically enter the Premises (but not the equipment shelter except in case of an emergency) to visually inspect the Facility upon reasonable prior notice to LESSEE, which notice shall specify the date and time when LESSOR seeks to enter the Lease Area.

18. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

19. INTEGRATION AND SEVERABILITY. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this

Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

20. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the Laws of the State in which the Property is located. Venue for all actions in connection herewith shall be in Gunnison County, Colorado.

21. ASSIGNMENT.

a. Transfer by LESSEE. LESSEE shall not transfer, sublet, or assign this Agreement without the prior written consent of LESSOR, which consent shall be at the sole and absolute discretion of the LESSOR. For purposes of this Paragraph 21, the term "Transfer" shall be deemed to include the assignment, transfer, pledge, mortgage, hypothecation of this Agreement or any interest hereunder. In the event LESSOR consents to any Transfer, such consent shall not constitute a waiver of any of the restrictions of this Paragraph 21 or LESSOR'S governmental approvals of the Facilities constructed on LESSOR'S Property, and the same shall apply to each successive proposed Transfer related to this Agreement.

b. Permitted Transfers. Notwithstanding the provisions of Paragraph 21.a. above, LESSEE shall have the right, without LESSOR's consent, to assign this Agreement and/or sublet the Premises to any corporation or entity that is LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization; provided, however, that no such unconsented assignment or subletting shall be allowed unless: (a) LESSEE shall promptly notify LESSOR of any such transaction, (b) LESSEE shall, upon request from LESSOR, provide LESSOR with reasonable evidence sufficient to demonstrate that the proposed transferee has a tangible net worth that is equal to or greater than Ten Million Dollars (\$10,000,000) as of the date of the assignment/subletting, unless the proposed assignee or sublessee is a publicly traded entity and such evidence is provided by financial information regarding the entity that is accessible by the general public; (c) an assignee expressly assumes in writing LESSEE's obligations under this Agreement; (d) a sublessee agrees in writing to comply with the terms and conditions of this Agreement, including the indemnification and insurance obligations, and (e) LESSEE shall retain its primary liability under this Agreement. Notwithstanding the foregoing, under no circumstances shall LESSEE be permitted to assign or sublet a portion of the Premises leased under this Agreement to any third party, including an affiliate, parent, or subsidiary entity, for co-location purposes without LESSOR's consent as provided in Paragraph 21.a. above.

22. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: The Town of Crested Butte
Attn: Town Manager
P.O. Box 39
507 Maroon Avenue
Crested Butte, Colorado 81224

LESSEE: CommNet Cellular Inc.
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

23. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

24. SUBORDINATION AND NON-DISTURBANCE. LESSEE accepts this lease subject and subordinate to any existing contract (if disclosed to LESSEE), master lease, ground lease, equipment lease-purchase agreement (if disclosed to LESSEE), mortgage, deed of trust or other security interest (a "Mortgage") now constituting a lien, security interest or charge upon the Property or the improvements situated thereon. LESSEE shall at any time hereafter on demand execute any reasonable instruments, releases or other documents that may be required by any secured party for the purpose of subjecting and subordinating this lease to the lien of any such existing Mortgage. LESSEE further agrees to subordinate its interest in this Agreement to any future Mortgage hereafter created that constitutes a lien or charge upon the Property or the improvements thereon, provided that, as a condition precedent to such subordination to a future Mortgage, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's right to remain in occupancy of and have 'access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill LESSOR's obligations under the Agreement, and (3) promptly cure all of the then-existing LESSOR defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the LESSOR of the Property and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other

real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

25. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer at LESSEE's expense. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

26. DEFAULT.

a. LESSEE Default. LESSEE shall be deemed to be in default of this Agreement if: (i) LESSEE fails to pay rent or other sums due to LESSOR as required by this Agreement, where such default shall continue for a period of ten (10) days after written notice by LESSOR to LESSEE; (ii) LESSEE shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors; (iii) a receiver or trustee shall be appointed for all or substantially all of the assets of LESSEE; (iv) LESSEE shall vacate or abandon any substantial portion of the Premises; or (v) LESSEE shall fail to observe or perform any other covenants, conditions, or provisions of this Agreement to be observed or performed by LESSEE, when such failure shall continue for a period of thirty (30) days after written notice thereof by LESSOR to LESSEE (provided, however, that if the nature of LESSEE's default is such that more than thirty (30) days are reasonably required for its cure, the LESSEE shall not be deemed to be in default if LESSEE commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion).

b. In the event there is a default by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such default. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such default, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the default within the time periods provided in this Paragraph.

27. REMEDIES. In the event of a default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Property is located.

28. ENVIRONMENTAL. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("EH&S Laws"). LESSEE shall indemnify and hold harmless the LESSOR from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws or to the extent that

LESSEE causes a release of any regulated substance to the environment. The Parties recognize that LESSEE is only leasing a small portion of LESSOR's property and that LESSEE shall not be responsible for any environmental condition or issue except to the extent resulting from LESSEE's specific activities and responsibilities. In the event that LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if LESSEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, LESSOR agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

29. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired. Each of LESSOR and LESSEE hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage casualties covered by the insurance maintained hereunder, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such times as the releasor's policies shall contain a clause or endorsement to the effect that any release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. LESSOR and LESSEE each agree that they will request the insurance carriers to include in each Party's policies such a clause or endorsement.

30. Intentionally Deleted.

31. SUBMISSION OF AGREEMENT; PARTIAL INVALIDITY; AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

32. APPLICABLE LAWS. During the Term, LESSEE shall maintain the Lease Area in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall comply with all present and future laws, statutes, ordinances, regulations, and rules relating to the Premises, LESSEE's equipment and Facility, and federal laws or regulations regulating the allowable presence of and/or exposure to electromagnetic forces ("EMFs") and radio frequency ("RF") emissions.

33. RELOCATION. LESSOR, on one (1) occasion, may relocate LESSEE to another location on the LESSOR's Property (herein referred to as the "Alternate Property"), provided the Alternate Property is similar to LESSEE's current Premises in size and is compatible for LESSEE's use in LESSEE's sole discretion. LESSOR shall pay all costs incurred by LESSEE for relocating LESSEE's equipment from the Premises to a mutually agreeable site and improving the Alternate Property so that the Alternate Property is substantially similar to the original Premises, including all costs incurred to obtain all of the certificates, permits and other approvals that may be required by any Federal, State or Local authorities as well as any satisfactory soil boring tests which will permit LESSEE use of the Alternate Property as set forth in Paragraph herein. LESSOR shall give LESSEE at least six (6) months written notice before requiring LESSEE to relocate. LESSEE's service will not be interrupted and LESSEE shall be allowed if necessary, to place a temporary cell site and antenna structure on LESSOR's Property during relocation.

34. LESSOR'S RESERVED SPACE. LESSEE shall reserve tower at the Premises for the LESSOR at no charge, to install one antenna not to exceed 45' tower elevation, and, together with associated lines of cable on LESSEE's tower, provided LESSOR enters into a separate license agreement with LESSEE which is reasonably acceptable to LESSEE to govern LESSOR's use of such tower space.

35. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

36. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

37. EXHIBITS, REFERENCES. All exhibits, attachments, amendments, riders, and addenda attached to this Agreement are hereby incorporated into and made a part of this Agreement. All references in this Agreement to paragraphs, exhibits, and provisions are made, respectively, to the paragraphs, exhibits, and provisions of this Agreement, unless otherwise specified.


38. NONAGENCY. It is not the intention of LESSOR or LESSEE to create by this Agreement a relationship of master-servant or principal-agent, and under no circumstances shall

LESSEE be considered the agent of LESSOR, or vice versa, it being the sole purpose and intent of the Parties to this Agreement to create a relationship of landlord and tenant.

39. ATTORNEY FEES. In the event that any action shall be instituted by LESSOR or LESSEE (or their respective successors) for the enforcement of any of their rights in and under this Agreement, or if either Party is involuntarily enjoined in an action or proceeding involving the other Party, the Party in whose favor judgment shall be rendered in such action shall be entitled to recover from the other Party all costs reasonably incurred by the prevailing Party in such action, including actual costs and reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR: Town of Crested Butte

By: 
Name: James A. Schmitt
Title: Mayor
Date: 8-25-2020

LESSEE: CommNet Cellular Inc. d/b/a Verizon Wireless


By: 
Name: Steve LeVar
Title: Director Network Field Engineering
Date: 11/10/2020

EXHIBIT "A"
Legal Description

SITUATED IN THE COUNTY OF GUNNISON, IN THE STATE OF COLORADO:

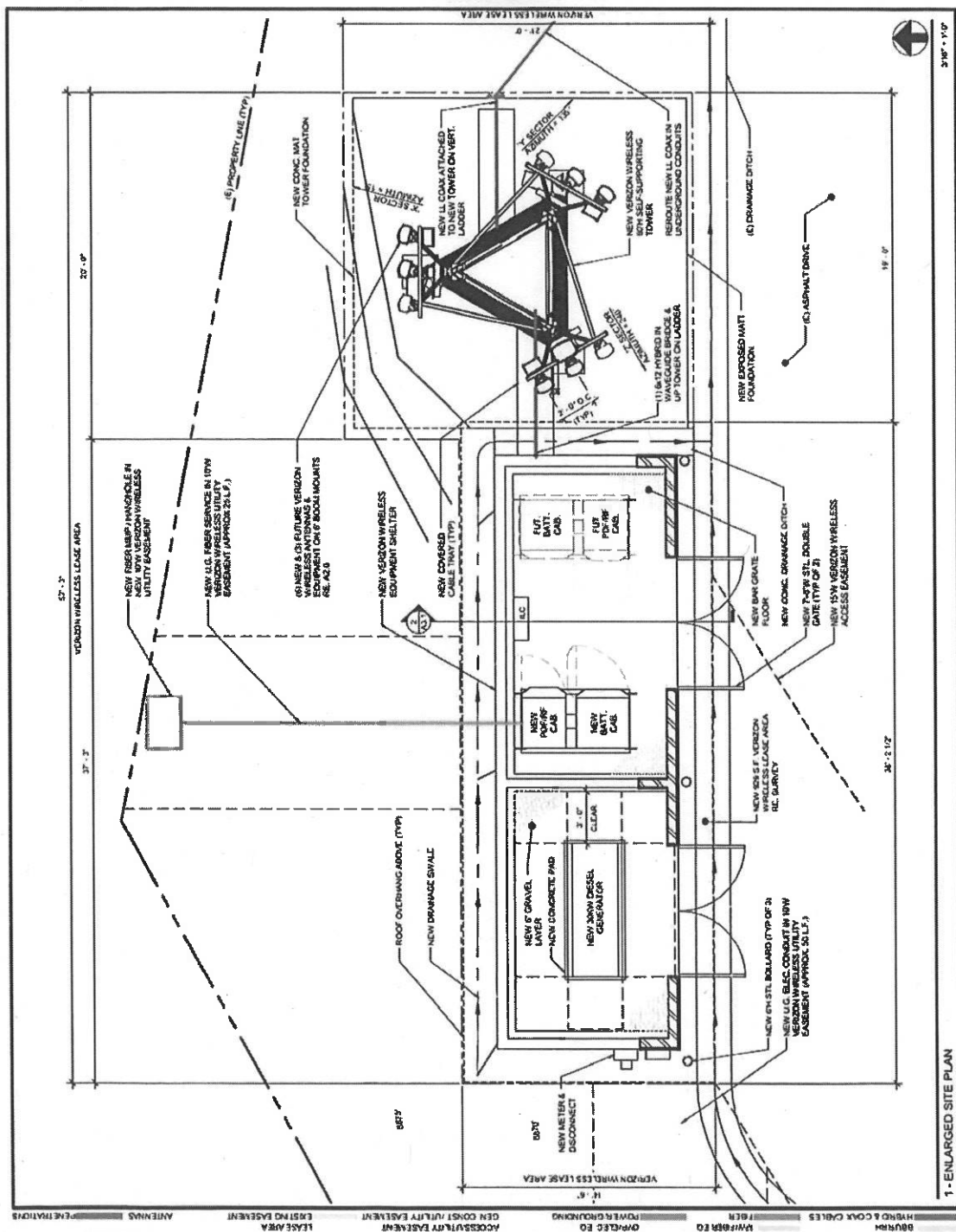
BEING SHOWN AS TRACT NO. 1 ON THE FINAL PLAT OF THE DYER SUBDIVISION
RECORDED ON 11/24/1999, IN PLAT INSTRUMENT NO. 497990 OF THE GUNISON COUNTY
RECORDS.

EXHIBIT "B"
Description of Premises

(See Attached – 7 pages)

[illegible]





VALERIO W. BELL, JR. SERVICE
1131 S. VALERIO WAY, PALM BEACH
FLORIDA 33406

PROJECT INFORMATION

7/17/2014

DELIVERY TO YOU

Butte-Alta 2

POSTED BY THE COPIES
JAN 1975

CONSULTANT

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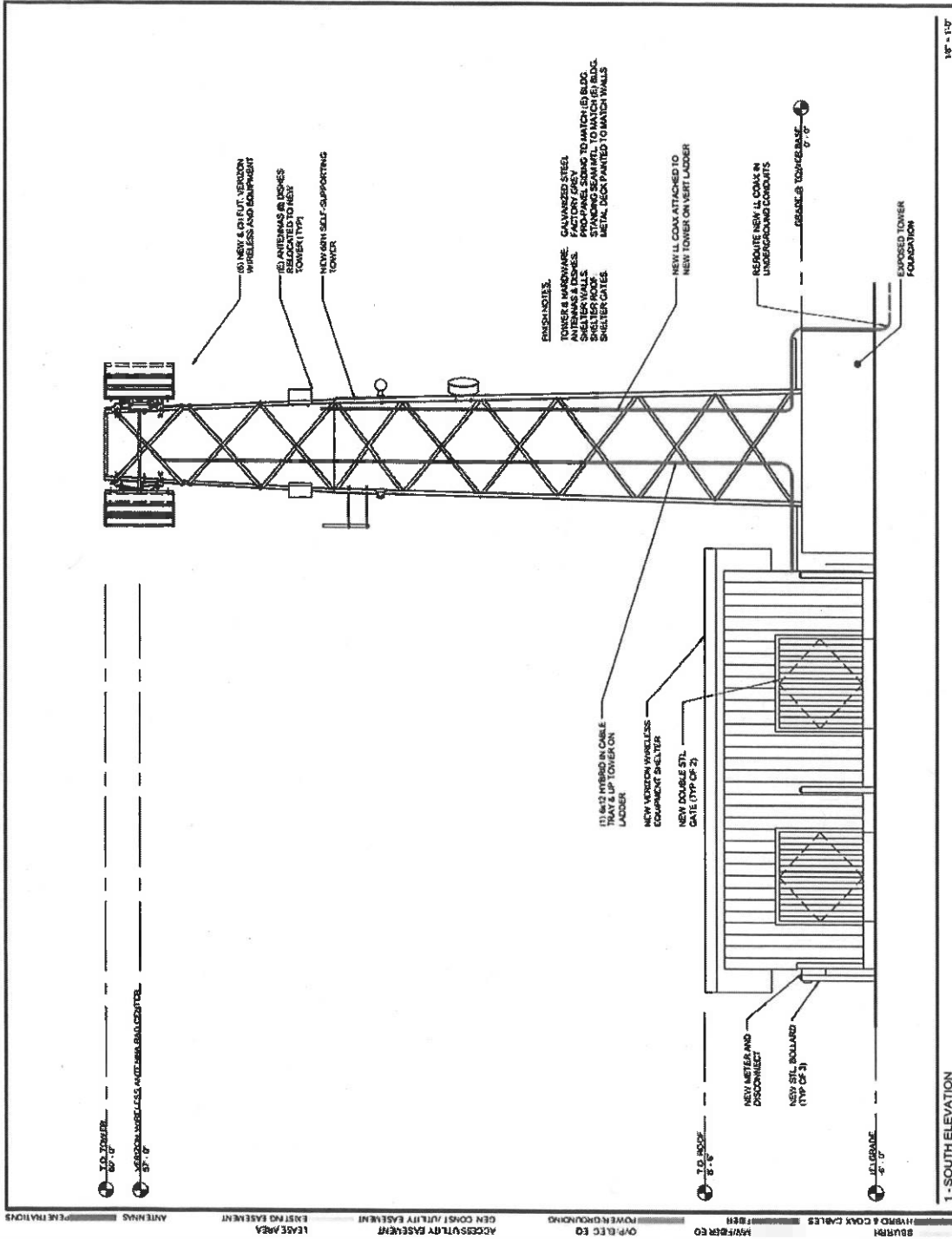


1815 SOUTH ZANG STREET, SUITE 207
LETTERON, COLORADO 80727
OFFICE: 303 531 8374

**NOT FOR
CONSTRUCTION**

ELEVATION

A3.0



FILED FOR RECORD AT REQUEST OF
AND WHEN RECORDED RETURN TO:
Tock & Corl, PLLC
Attn: S. Ward
1425 Western Ave., Suite 104
Seattle, WA 98101

Space above this line is for Recorder's use.

Memorandum of Land Lease Agreement

Grantor: The Town of Crested Butte, Colorado, a Colorado home
rule municipal corporation

Grantee: CommNet Cellular Inc. d/b/a Verizon Wireless

Legal Description: Tract No. 1, Final Plat of Dyer Subdivision,
County of Gunnison, State of Colorado
Official legal description attached as Exhibit "A"

Assessor's Tax Parcel ID#: 3177-350-06-001

Reference # (if applicable): N/A


MEMORANDUM OF LAND LEASE AGREEMENT

THIS MEMORANDUM OF LAND LEASE AGREEMENT evidences that a Land Lease Agreement ("Agreement") was entered into as of NOVEMBER 10, 2020, by and between The Town of Crested Butte, Colorado, a Colorado home rule municipal corporation ("Lessor"), and CommNet Cellular Inc. d/b/a Verizon Wireless ("Lessee"), for certain real property located on Butte Avenue, Tract 1 Dyer Subdivision, County of Gunnison, State of Colorado 81224, within the property of Lessor which is described in Exhibit "A" attached hereto ("Legal Description"), together with a right of access and to install and maintain utilities, for an initial term of five (5) years commencing as provided for in the Agreement, which term is subject to Lessee's rights to extend the term of the Agreement as provided in the Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Memorandum of Land Lease Agreement as of the day and year last below written.

LESSOR: The Town of Crested Butte, a Colorado home rule municipal corporation

By: 
Name: James A. Schmidt
Title: Mayor
Date: 8-25-2020

LESSEE: CommNet Cellular Inc. d/b/a Verizon Wireless


By: 
Steve LeVar
Director Network Field Engineering
Date: 11/10/20

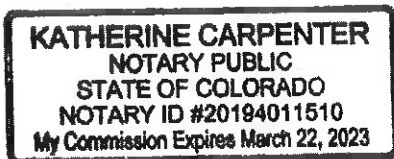
Exhibit "A" – Legal Description

LESSOR ACKNOWLEDGMENT

STATE OF Colorado)
) ss.
COUNTY OF Gunnison)

On this 25th day of August, 2020, before me, a Notary Public in and for the State of Colorado, personally appeared James A. Schmidt, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that He/She was authorized to execute the instrument, and acknowledged it as Mayor of The Town of Crested Butte, Colorado, a Colorado home rule municipality, to be the free and voluntary act and deed of said party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



K Carpenter
NOTARY PUBLIC in and for the State of Colorado,
residing at 914 Butte Ave.
My appointment expires March 22, 2023
Print Name Katherine Carpenter

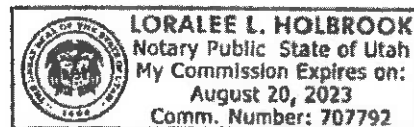
LESSEE ACKNOWLEDGMENT

STATE OF UTAH

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this NOVEMBER 8-20, 2020
(date) by Steve LeVar Director Network Field Engineering of
CommNet Cellular Inc. d/b/a Verizon Wireless, a Colorado corporation, on behalf of the
corporation.

Loralee L. Holbrook
Notary Public
Print Name: LORALEE L. HOLBROOK



Notary Seal

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The land referred to in this Binder is situated in the State of Colorado, County of GUNNISON, described as follows:

SITUATED IN THE COUNTY OF GUNNISON, IN THE STATE OF COLORADO:

BEING SHOWN AS TRACT NO. 1 ON THE FINAL PLAT OF THE DYER SUBDIVISION
RECORDED ON 11/24/1999, IN PLAT INSTRUMENT NO. 497990 OF THE GUNISON COUNTY
RECORDS.